

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Sections 163 and 164
Title 14, California Code of Regulations
Re: Harvest of Herring and Harvest of Herring Eggs

- I. Date of Initial Statement of Reasons: May 1, 2008
- II. Date of Final Statement of Reasons: September 9, 2008
- III. Dates and Locations of Scheduled Hearings:

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| (a) | Notice Hearing: | Date: June 27, 2008
Location: Upland, CA |
| (b) | Discussion Hearing | Date: August 8, 2008
Location: Carpinteria, CA |
| (c) | Adoption Hearing: | Date: September 4, 2008
Location: Kings Beach, CA |

- #### IV. Update:

The Commission adopted the Department recommended quota for San Francisco Bay Pacific herring fishery for the 2008-09 season of 1,118 tons, which is 10 percent of the 2007-08 spawning biomass as noticed in the Initial Statement of Reasons. Further, the Commission adopted the Department recommended season dates for Tomales Bay and San Francisco Bay. In addition, minor changes were made to correct the revision dates on Form 1377 and Form 1406 to reflect the current license year application.

- V. Summary of Primary Considerations Raised in Opposition and in Support:

Two letters have been received by the Commission commenting on this item.

Harold Ames Letter dated July 15, 2008 (Attachment 1)

Comment 1

Mr. Ames stated that the Vilicich facility (Marshall Boat Works) in Tomales Bay is in bad condition, there is no place to tie boats because the docks are gone and

they are unable to replace them. Mr. Ames also stated that north winds in the summer and southerly storms in the winter will make it impossible to have a boat in the water and to fish. With such limited facilities it will be almost impossible for the herring buyers to buy fish.

Department Response

Comment noted.

Comment 2

With this in mind (the poor condition of Marshall Boat Works), the Tomales Bay Herring Permittees would like to fish outside of Tomales Bay in the Bodega outer bay from Stemple Creek west – the same area as fished before.

Department Response

For several seasons prior to 1992-93, Tomales Bay was closed to fishing to allow for the spawning population to rebuild. During this same time, a small fishing quota was allowed for outer Bodega Bay. Tomales Bay was reopened to herring fishing in 1992-93 with the provision that no herring fishing would be allowed in outer Bodega Bay. The recommendation to close outer Bodega Bay to herring fishing was made when Department staff determined that obtaining biomass estimates in that area was not feasible, and no information would be available for setting annual quotas. There is currently no information available on the origin and population biomass of Pacific herring found in the outer Bodega Bay, thus a fishery in this area still cannot be adequately monitored and assessed by the Department.

Comment 3

With no salmon season Mr. Ames believes that the fishermen from Bodega Bay need this (the outer bay area fishing area) to supplement their income.

Department Response

Comment noted.

Catharine Benediktsson Letter dated July 11, 2008 (Attachment 2)

Comment 1

Ms. Benediktsson stated that there were no gatherings of seagulls feeding on herring or roe last season, anywhere around the Tiburon coastline. This summer she saw a huge number of jellyfish on the beaches. She explained that the two –

fisheries and jellies have been discussed in the scientific community worldwide recently. She also stated that jellies apparently compete with fish and fewer fish leads to more jellies.

Department Response

Department trawl data do not show a correlation between high fish abundance and low jellyfish abundance in San Francisco Bay. On the contrary, conditions that favor jellyfish appear to also be beneficial for many fish species.

Comment 2

Ms. Benediktsson expressed her concern that the herring fishery is in trouble, as is the salmon fishery. She stated the Department has been given the job of managing the fishery to health, not extinction. Until the herring come back in significant quantities, Ms. Benediktsson stresses the Department must lower the quota.

Department Response

The Department continues to be concerned about the status of the herring population in San Francisco Bay. Consequently, our recommendation provides for a sustainable harvest while taking into account the depressed condition of the stock. The Department's recommendation for the 2008-09 season is 1,118 tons, which is 10 percent of the 2007-08 spawning biomass.

In addition, the quotas for the San Francisco Bay herring fishery are not determined by a fixed percentage, but rather from within a range of values, the upper bound of which should not be exceeded in order to maintain a sustainable fishery. The selection of a quota from within that range is based on additional biological and fishery data collected each season such as growth rates, strength and importance of individual year-classes, recruitment of incoming year-classes, and oceanographic conditions.

Comment 3

Ms. Benediktsson requests the boats have mufflers on them when fishing at night, and to stay 500 feet from the houses on shore.

Department Response

Although there is no regulation prohibiting boats from fishing within 500 feet from shoreline residences at night, the Department has worked with fishing industry representatives to develop noise reduction measures to reduce disturbance to shoreline residents from night time fishing activity. These measures are

incorporated into Sections 163, Title 14, California Code of Regulations, and include; noise dampening devices for shakers and anchor chains, muffled engine exhaust systems, limited use of deck speakers, and/or reduced speed within 500 feet of shore. This regulation also states that herring permittees shall recognize city ordinances governing transient noise sources, when fishing within 500 feet of any shoreline with residential dwellings.

Sam Liberati (Directors Herring Advisory Committee Co-Chairman), in oral comment at the August 8, 2008 Commission Meeting

Comment 1

Mr. Liberati began by complimenting the biologists on a job well done. He believes the industry is satisfied with the Department (Fish and Game). The industry would like to continue to improve the working relationship with the Department and looks forward to no further conflicts. The industry and Mr. Liberati look forward to coming to the Commission in the future with positive changes in how this fishery is managed.

Department Response

Comment noted.

Comment 2

Mr. Liberati stated that both the industry and the Department would like to bring herring regulations “up to date,” saving time and money for both parties.

Department Response

Comment noted.

Comment 3

Mr. Liberati stated that the industry continues to be dissatisfied with the results of the peer review. Fishermen believe they should have been involved in the review process.

Department Response

In 2003 an independent peer review of the Department’s commercial Pacific herring fishery management was administered by California Sea Grant. This review satisfied the external peer review provisions of the Marine Life Management Act. Peer review panel members included fishery scientists from the University of California, NOAA Fisheries, Inter American Tropical Tuna

Commission, and the Canadian Department of Fisheries and Oceans. Recommendations from this peer review have been incorporated into the Department's herring fishery management program.

Comment 4

Mr. Liberati reiterated that the industry does not agree with the current survey methods used to determine herring biomass. The Department historically averaged the hydroacoustic and spawning biomass surveys to determine population size. They now only use the spawning biomass (spawn deposition) survey method. This method frequently misses deepwater spawn events.

Department Response

The independent peer review of the Department's spawning biomass estimation methodology found that the hydro-acoustic method tended to overestimate the spawning biomass, and the spawn deposition survey was a better estimator of spawning biomass. The Department discontinued the hydroacoustic survey as a secondary biomass estimation technique.

Comment 5

The Department use to have very poor survey equipment, the industry stepped in and proposed the herring stamp to fund better equipment for herring management.

Department Response

Comment noted.

Sam Liberati (Directors Herring Advisory Committee Co-Chairman), in oral comment at the September 4, 2008 Commission Meeting

Comment 1

Mr. Liberati stated that during a past attempt to close the herring fishery, fisherman publicly disagreed with the Department's interpretation of the spawning biomass data. The fishermen's interpretation of the data persuaded the Fish and Game Commission that the fishery was not in decline. The Chairman of the Fish and Game Commission directed the Department to work more closely with the industry. To further support the fishery, the Commission adopted a lower mesh size to increase catch rates of Pacific herring for San Francisco.

Department Response

Comment Noted.

Comment 2

Mr. Liberati stated that spawning biomass survey estimation techniques have changed and those changes have affected the estimate, which the quota is based upon. Mr. Liberati continued by stating that at one time California and other west coast herring fisheries used a harvest quota of 20 percent. The San Francisco Bay fishermen operated historically with a 15 percent harvest quota and in recent seasons have agreed to fish at an even more conservative level of 10 percent. The current low quota is supported because so few boats are fishing, and catching the entire quota is unlikely.

Department Response

Comment Noted.

Comment 3

Mr. Liberati also described how in the past the fisherman and the Department worked together to end the round-haul fishery in San Francisco Bay. He stated that the round-haul fishery always caught their quota and often took immature herring. Ending this fishery helped to prevent overages and allowed spawning in the "Banzai Area," an area now closed to fishing.

Department Response

The Department has not substantiated fishermen's assertions of herring spawning in the "Banzai Area."

Comment 4

Mr. Liberati states that the fishermen are not catching the quota due to increased area closures (Hunters Point Naval Yard, Oakland International Airport, Alameda Naval Air Station, and the Banzai Area), and low industry participation. This combined with high fuel costs has made the fishery less economically viable.

Department Response

Comment Noted.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulatory Action: No alternatives were identified.
- (b) No Change Alternative: A no change alternative would provide a quota for the 2008-09 fishing season of 1,094 tons.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

IX. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The California commercial herring fishery takes place in four areas; San Francisco Bay, Tomales Bay, Humboldt Bay, and Crescent City Harbor. However, the greatest economic benefit is derived from herring activities in San Francisco Bay, which typically generates about 90 percent of the total average annual revenue for this California fishery. In real dollars, San Francisco Bay herring revenue has averaged about \$2.7 million out of \$3.0 million for the State, since 2004. All the herring fishermen and herring processing plants are small businesses as defined under Government Code Section 11342.610. Since the proposed quota of 10 percent spawning biomass will result in a 2.1 percent increase in allowable harvest compared to last season, there are no adverse economic impacts associated with the proposed regulation.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new fees or reporting requirements stipulated under the proposed regulations.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

INFORMATIVE DIGEST\POLICY STATEMENT OVERVIEW

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulations would establish the fishing quota and season dates and times that fishing operations are allowed for the 2008-09 season in San Francisco Bay and season dates and times for fishing operations for the 2008-09 season in Tomales Bay.

The following is a summary of the proposed changes in Sections 163, and 164, Title 14, CCR:

- The proposed regulations would establish the fishing quota for San Francisco Bay for the 2008-09 herring fishing season, based on the most recent biomass assessments of spawning populations of herring. The Department is providing the Commission the option to consider a quota within the range of 0 to 10 percent of the 2007-08 spawning biomass estimate of 11,183 tons. The Department is recommending the San Francisco Bay quota be set at 1,118 tons, which represents 10 percent of the 2007-08 spawning biomass estimate. If the Commission were to adopt this option, a 1,118 ton quota would result in a 1.9 ton individual quota for a "CH" gill net permittee and a 1.1 ton individual quota for a non-"CH" gill net permittee participating in the HEOK fishery.

The Commission adopted the Department recommend quota for San Francisco Bay for the 2008-09 season of 1,118 tons, which is 10 percent of the 2007-08 spawning biomass as noticed in the Initial Statement of Reasons.

- There are no quota changes proposed for Crescent City Harbor, Humboldt or Tomales bays for the 2008-09 herring season.
- Proposed regulations would allow fishing in San Francisco Bay from 5:00 p.m. on Monday, December 1, 2008, until noon on Friday, December 19, 2008 ("DH" gill net platoon only). Recommended dates for the odd and even platoons are from 5:00 p.m. on Sunday, January 4, 2009, until noon on Friday, March 20, 2009.

The Commission adopted the Department recommended season dates for San Francisco Bay.

- The proposed regulations would set the dates of the roe herring fishery in Tomales Bay from noon on Friday, December 26, 2008, until noon on Friday, February 27, 2009.

The Commission adopted the Department recommended season dates for Tomales Bay.

Following are minor changes proposed to clarify and simplify the regulations:

- The proposed regulations would correct the Harvest of Herring permit application number revision date in subsection 163(b)(1) and Herring Eggs on Kelp permit application number revision date in subsection 164 (h)(1) to coincide with the 2008-09 season application.

The Commission approved of minor amendments to clarify and simplify the regulations.